

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

WILLIAM KAUL  
Plaintiff

vs.

COMPANION PROPERTY AND  
CASUALTY INSURANCE COMPANY  
AND MILES MCCREADY  
Defendants.

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C.A. No. \_\_\_\_\_

**DEFENDANTS COMPANION PROPERTY AND CASUALTY INSURANCE  
COMPANY AND MILES MCCREADY'S  
NOTICE AND PETITION FOR REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants, Companion Property and Casualty Insurance Company and Miles McCready, in Cause No. 15-CCV-055662 pending in the County Court At Law Number 4 of Fort Bend County, Texas, file this Notice and Petition for Removal from that Court to the United States District Court for the Southern District of Texas, Houston Division on the basis of diversity of citizenship and amount in controversy and respectfully show:

**I.  
FACTUAL BACKGROUND**

1.1. On or about August 20, 2015, Plaintiff filed his Original Petition in the matter styled *William Kaul v. Companion Property and Casualty Insurance Company and Miles McCready*, Cause No. 15-CCV-055662, in the County Court At Law Number 4 of Fort Bend County, Texas, in which Plaintiff made a claim for damages to his home under a homeowner's insurance policy. Plaintiff

filed suit against Companion Property and Casualty Insurance Company and Miles McCready in his Original Petition.

1.2. Plaintiff served Defendant Companion Property and Casualty Insurance Company on or about August 28, 2015.

## **II.**

### **BASIS FOR REMOVAL**

2.1. Removal is proper and based upon diversity of citizenship under 28 U.S.C. §§1332(a)(1), 1441(a), and 1446.

2.2. Plaintiff was, and is, at the time the lawsuit was filed, a resident of the State of Texas. See Plaintiff's Original Petition,

2.3. Defendant Companion Property and Casualty Insurance Company is a South Carolina company that operates its headquarters and principal place of business in Columbia, South Carolina. Under 28 U.S.C. §1332, a corporation is a citizen in the state by which it is incorporated and the state where its principal place of business is located.

2.4. Defendant Miles McCready is a resident of the state of Florida.

#### **A. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction**

2.5. In determining the amount in controversy, the court may consider "policy limits. . . penalties, statutory damages, and punitive damages." *St Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); see *Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1 288-G, 1999 WL 151667, at \*2-3 (ND. Tex. Mar, 10, 1999) (finding a sufficient amount in controversy in plaintiffs case against their insurance company for breach of contract, fraud,

negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Intl Co.*, 75 F. Supp. 2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insured against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

2.6. Plaintiff's claims are centered on the insurance company's alleged failure to pay the full proceeds of Plaintiff's policy necessary to make repairs to Plaintiff's dwelling. Plaintiff's dwelling policy limit is in excess of \$75,000. In addition, Plaintiff's Original Petition alleges the insurance company is liable under various causes of action for actual damages and attorneys fees. See Plaintiff's Original Petition, Paragraphs IX, X, XI, and XII. Plaintiff's Original Petition seeks damages "more than \$100,000, but not more than \$200,000." See Plaintiff's Original Petition, Paragraph IX.

### **III.**

#### **THE REMOVAL IS PROCEDURALLY CORRECT**

3.1. Defendants made an appearance in the state court action on September 18, 2015 (see Exhibit B"). Defendants file this Notice of Removal within the 30 day time period required by 28 U.S.C. § 1446(b).

3.2. Venue is proper in this district and division under 28 U.S.C. § 1446(a) because this district and division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this district and division.

3.3. Pursuant to 28 U.S.C. § 1446(d), promptly after Defendants file this notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.4 Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice and Petition for Removal will be filed with the Clerk of the Fort Bend County Civil Court, promptly after Defendants file this notice.

#### **IV.** **CONCLUSION**

Based upon the foregoing, the exhibits submitted in support of this Removal and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Companion Property and Casualty Insurance Company and Miles McCready hereby remove this case to this court for trial and determination.

Respectfully submitted,

Hanszen Laporte LLP

By: /s/ H. Mark Burck

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Attorney for Defendants,  
Companion Property and Casualty  
Insurance Company and Miles  
McCready

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded to all interested parties on this 17th day of September, 2015 in accordance with the Federal Rules of Civil Procedure and as indicated below:

Wes Holland  
William N. Allan, IV  
Allan, Nava, Glander & Holland, PLLC  
825 W. Bitters Road, Suite 102  
San Antonio, TX 78216  
**Via Facsimile No. 210/305-4219**

/s/ H. Mark Burck  
H. MARK BURCK